

ANDOVER BOARD OF HEALTH

Minutes

December 14, 2009, 6 P.M.

1st Floor Conference Room

36 Bartlet Street

The Board of Health meeting was called to order by Vice-Chairman, Donald H. Miller, at 6:08 p.m. Present were Dr. Donald H. Miller, Vice-Chairman, Ms. Katherine Kellman, Clerk, and Mr. Thomas G. Carbone, Director of Public Health. Ms. Candace B. Martin arrived at 6:10 p.m.

I. Approval of Minutes

- **Regular Meeting of November 2, 2009**

Motion by Ms. Martin, seconded by Dr. Miller to approve the Minutes of the Regular Meeting of November 2, 2009. Unanimous Approval.

II. Appointments & Hearings

- **6 p.m. - Danielle Carbone for Yella, 16 Post Office Avenue – Request to Allow the Installation of an Automatic Grease Trap in Lieu of an Exterior Trap** – Present were Ms. Danielle Carbone and her father. The Health Director explained that Danielle was requesting a Grease Trap Variance because this was an existing establishment with no room for an exterior grease trap. She also requested to delay putting in an interior grease trap, the Big Dipper, until 2010 when she would have the finances available to do so. The Health Director explained that the Board was going to change the Sewer Regulations to allow interior grease traps, but since that has not been changed yet, Ms. Carbone would still need the Variance at this time. The Health Director made specific recommendations and the Board voted with his recommendations as follows:

Motion by Dr. Miller, seconded by Ms. Kellman to approve the variance with the following stipulations:

- 1. The mechanical grease interceptor shall be installed for use by December 1, 2010.*
- 2. Installation shall occur with the benefit of a plumbing permit.*
- 3. The existing interior grease trap shall be cleaned on a monthly basis and a log of said cleaning shall be maintained on site.*
- 4. The decision letter for variance approval shall be filed at the Registry of Deeds, with the variance expiring upon the installation of the mechanical grease interceptor, unless revoked by the Board sooner.*

Unanimous approval.

- **6:10 p.m. - Yee Yang for Thai Sweet Basil – Status Update** – Present were Mr. Yee Yang, owner, and Michelle Cramm, Consultant for Mr. Yang. Ms. Martin told Mr. Yang that she was very pleased with the improvements she saw on the inspection reports. Mr. Yang stated that all his staff is now ServSafe certified. Mr. Carbone informed the Board that Ms. Cramm performed a joint inspection with Ms. Crafts, Health Agent, and they saw a vast improvement. Mr. Carbone recommended the Board close the Show Cause Hearing with specific recommendations.

Motion by Ms. Martin to close the Show Cause Hearing and at this time take no further action, with the following conditions:

1. *Grease shall not be allowed to accumulate within the establishment.*
2. *Potentially Hazardous Foods shall be kept at appropriate temperatures.*
3. *General housekeeping of the facility must be maintained.*
4. *Failure to meet these requirements will result in a new hearing before the Board of Health, with the recommendation from the Director of Public Health being that the food service permit be permanently revoked.*

Dr. Miller seconded for discussion.

Dr. Miller asked what actions would cause Mr. Carbone to revoke the Food Service Permit – would a broken thermostat causing food to be at the wrong temperature be a reason to revoke? Mr. Carbone explained that it would be the responsibility of the food establishment to realize that the thermostat is broken. Mr. Carbone further explained that he would not have the authority to revoke the Permit; that would be the Board's responsibility. Ms. Kellman questioned how to define failure. Mr. Carbone replied that if the previous issues come back to the forefront, that may be cause; however, minor issues could be worked through. Ms. Cramm also informed the Board that Mr. Yang worked very hard with her to clean up the premises and keep them clean and that his staff has been cooperative. Other staff members have also shown an interest in becoming ServSafe certified because they want to understand food safety. Ms. Cramm also was going to keep in touch with Ms. Crafts.

No further discussion was needed.

Unanimous Approval.

- **6:30 p.m. - George Dukas for Lantern Brunch – Status Update** - Present were Mr. George Dukas, owner of Lantern Brunch and his wife. Ms. Martin told Mr. Dukas that she was pleased with his efforts and that she hoped he understood that the Board wanted to work with him, not against him. Mr. Carbone informed the Board that Ms. Crafts, Health Agent, felt more comfortable as the inspections have been more satisfactory. Mr. Carbone stated that he wanted to do a few more than the required twice a year inspections because of past history. Mr. Carbone recommended that the Board close the Show Cause Hearing with specific recommendations.

Motion by Ms. Martin, seconded by Dr. Miller to close the Show Cause Hearing and at this time take no further action, subject to the following conditions:

1. *Grease shall not be allowed to accumulate within the establishment.*
2. *Potentially Hazardous Foods shall be kept at appropriate temperatures.*
3. *General housekeeping of the facility must be maintained.*
4. *Failure to meet these requirements will result in a new hearing before the Board of Health, with the recommendation from the Director of Public Health being that the food service permit be permanently revoked.*

Unanimous approval.

- **6:50 p.m. - My Brothers Place Update** – Present was Mr. Charlie Eliopoulos, owner of My Brothers Place Food Establishment. Mr. Carbone explained that the Board felt it was appropriate to have him retake the ServeSafe exam and report back to the Board in November. Due to a scheduling oversight, the Show Cause Hearing had been moved to the December agenda. Mr. Eliopoulos did retake the test, but failed. He is willing to take the test again and is in the process of looking for another class. Ms. Crafts performed an inspection on December 18, 2009 and found improper storage of wipe cloths, a hood that needed cleaning, and saw a non-compliance sticker on the extinguishing system. Mr. Eliopoulos explained that he had someone coming in on December 22, 2009 at 8:30 a.m. to fix the extinguishing system. The Board wants him to try to retake the exam, and to devise a private or self-inspection plan. Ms. Martin commented that the Board has seen the benefit of having an advisor in the past and felt that an advisor could help Mr. Eliopoulos with the ServSafe exam. Mr. Carbone recommended that the Board continue for three months and have Mr. Eliopoulos hire a private person at the site to do one-on-one hands-on review.

Motion by Ms. Martin, seconded by Dr. Miller to continue the Show Cause Hearing for three months until the March, 2010 Board of Health Meeting, with the requirement that he hire an inspector to improve conditions and work habits. Unanimous approval.

- **7:00 p.m. – Jim Loscutoff for Camp Evergreen – Request for a Determination of Compliance of Semi-Public Swimming Pool** – Present were Mr. Jim Loscutoff and his wife, Debbie who were seeking a variance of 105 CMR 435.000 so they can keep operating their semi-public pool at Camp Evergreen. Mr. Carbone explained to the Board that when he saw the above ground pool he found that the pool was not meeting the requirements of Chapter V of the State Sanitary Code, so in the Spring he told Mr. Loscutoff that this would be the last year he would issue a permit for this pool without a design change or a variance. Mr. Carbone found there were no dual main drains as required by the Virginia Graeme Baker Safety Act, there was only one suction outlet where two are required, and there was only one return inlet where two are required. The pool has been in use for approximately 35 years and has been updated over that time. During that period, there have been no violation issues or injuries of any kind. Mr. Loscutoff explained this pool is only used for swimming

lessons for the children and that if the dual main drains were installed, they would stick up and cause a stumbling issue.

Motion by Dr. Miller to grant the Variance to 105 CMR 4.35 to allow one drain, one suction outlet and one return outlet. Motion was not seconded at this time.

Ms. Kellman stated that she felt the pool meets the intent of the regulations and should be safe, but would like the water to be tested for chlorine levels four times a day. Ms. Martin questioned if there was any way to retrofit this pool to compliance, while Ms. Kellman questioned if Mr. Loscutoff was confident there are no pockets of chlorine in the pool. Unfortunately, due to the age of the pool, retrofitting to comply would not be feasible. The current of the water does go in a circular motion, so the chlorine would not pocket since the chlorinator runs 24 hours a day for the eight weeks of the camp. Mr. Carbone explained that the pool draws water out the main drain, the return inlet is up high, and then the water is pushed toward the skimmers. If the water quality is tested four times a day, the children can be removed from the pool if there are any issues. Ms. Martin noted that the variance would only be for this pool, and if this pool is replaced, the variance would not apply.

Motion seconded by Ms. Martin, modified after discussion, to grant the variance with the following conditions:

1. *Limit the swimmers in the pool to fifteen at a time*
2. *Record the chemical readings four times a day*
3. *Maintain the flow rate to between 40 and 50 gallons per minute*

Unanimous approval.

• **7:15 p.m. – Bill McLeod and Mark Johnson for Arbor Lane Subdivision –** Present were Bill McLeod of Andover Consultants and Mark Johnson, Attorney. Mr. Carbone explained that this subdivision is located off Acorn Drive inside the Fieldstone Meadows subdivision. Arbor Lane is a three lot subdivision of residential homes with municipal water and sewer, with the water to be looped between Acorn Drive and Clark Road and is currently before the Planning Board. Mr. Carbone explained that the Board of Health has 45 days from the submission date of December 18, 2009 to make a decision; therefore the Board needs to make a decision tonight because the 45 day deadline is January 1, 2010. Mr. Carbone stated that the Board of Health should look at the drainage issues and then can give an approval or disapproval of the Subdivision plan, but a continuance is not allowed. Mr. Carbone also stressed that Town Counsel always advises the Board to either approve or disapprove the plan that is presented to the Board within that 45 day timeframe. Mr. Carbone explained that there are two concerns: the first is the velocity of the storm runoff and the second is that the water not being absorbed on site due to an increase in impervious surfaces would now be going somewhere else. With the additional pavement and the new buildings, there is nowhere for the drainage to go and there are no plans for retention to maintain the added drainage on the site. The plan is to

connect the new drainage into existing basins on Acorn Street and Mr. Carbone is concerned that sediment could get into the nearby wetlands as a result. As the water fills in the deep sumps and then overflows, such as when there is a severe rainstorm, the sediment could go into the watershed. Mr. Carbone stated that the way the plan is designed, the potential is there to re-suspend fine particles in the catchbasin, so, in his opinion, this is not a good design. The standard is to put in a settling facility such as a forebay prior to discharge. Mr. Carbone was not recommending approval and informed the Board that the Town Engineer has similar concerns as well. Mr. MacLeod stated that he believed the plans are complete and comply with Stormwater Regulations as well as Mass. DEP regulations. One lot has wetlands, but the subdivision will be on sewer, so that should not be a health issue. They do not want to do a retention pond because the site is at the bottom of the watershed. Mr. McLeod stated that right now there are two deep sump catch basins to catch silt from the roadway. If a sediment chamber is added, then a Homeowner's Association would have to be created because the Town won't maintain that. Mr. McLeod did not want to withdraw the plans, and stated that he was sure the Planning Board would have no issue with having a Peer Review done if that is what the Board of Health decides it requires. Mr. Carbone asked if Mr. MacLeod withdrew or the plans were denied this evening, if Mr. MacLeod could have a Peer Review done prior to re-filing the plans. Mr. MacLeod stated that the process is to let the Planning Board know a Peer Review is needed and the Planning Board would require it. Ms. Martin asked if the Board of Health approved the plan tonight, and a Peer Review was done later, would the Board then get a review of the final plan. Mr. MacLeod informed her that the Board of Health could make a provision that after the Peer Review is completed and the plan is revised to the Planning Board's satisfaction, the final drainage system must still be approved by Mr. Carbone, and the revised plan would come back to the Board of Health for review.

Ms. Martin stated that her concern was with the drainage and felt that this issue should be addressed before the Board of Health approves the plan, so she did not feel that this was a complete plan and would not be voting for approval. Mr. MacLeod and Attorney Johnson stressed that they felt it would be an unfair burden to deny when they felt they had a complete plan and the Board could approve the plans with conditions, as it has done in the past. If the Board of Health disapproves the Subdivision plan, they would have to withdraw and would not be able to go forward, because the Planning Board would not approve without Board of Health approval.

Motion by Dr. Miller to approve the Arbor Lane Subdivision with the following conditions:

- 1. The drainage design must go through a peer review through the Planning Board review process.*
- 2. The final drainage system must be approved by the Director of Public Health.*

Ms. Martin seconded for discussion.

Ms. Martin questioned how Mr. Carbone would proceed after receiving the Peer Review to determine if the Subdivision plan should be approved or denied. Mr. MacLeod stated that the Planning Board won't approve the plans without Mr. Carbone's approval because of the conditions stated above. Also, a letter must be received from Mr. Carbone stating his approval of the final drainage system. Mr. Carbone stated that the accommodations seemed reasonable, and that he trusted Mr. McLeod and Attorney Johnson to proceed as directed. Ms. Kellman stated that trust would also be placed in the Peer Review, and Dr. Miller stated that the plans cannot go through without Mr. Carbone's approval since the Peer Review will go to Mr. Carbone for review.

Ms. Martin polled the Members with the following results: Ms. Martin, Nay, Dr. Miller, Aye, Ms. Kellman, Aye. The vote was two to one to approve the Arbor Lane Subdivision with the conditions stated above. Majority approval.

III. Discussion

- **Set up Animal Regulation Work Group** – Earlier this year the Board talked about reviewing the Animal Regulations and Mr. Carbone recommended the group to include no more than five to seven members. Ms. Martin set up a Charter proposal for the Board to review. As the Animal Regulations stand right now, animals such as chickens or roosters are not included. Dr. Lindsay agreed to participate. Bob Dalton (Andover firefighter and chicken owner), and Pam Gorrasi (Tewksbury Animal Inspector) are all animals owners and requested to be considered, as well as Janet Nicosia-Stanton, who does not own any animals but has been involved in 4-H. Andover Animal Control Officer, Wayne Nader, was given permission to be involved as well. Mr. Carbone is hoping to work out the details and get a group together by January, 2010. Dr. Miller suggested including someone who is aware of the State laws. Ms. Martin suggested checking the Talent Pool also. Ms. Martin instructed Mr. Carbone to find one more person for the group with Mr. Carbone or a Designee as the Chair.

Motion by Dr. Miller, seconded by Ms. Martin that the Charter include a comment that the Work Group would be Chaired by the Health Director or Designee. Unanimous approval.

Motion by Ms. Martin, seconded by Ms. Kellman to appoint Dr. Lindsay, Bob Dalton, Pam Gorrasi, Janet Nicosia-Stanton, and one other name to be brought to the Board by Mr. Carbone to the Animal Regulations Advisory Committee.

- **Amend Sewer Regulations to Allow an Automated Grease Trap in Lieu of an In-Ground Trap** – Mr. Carbone referred to the section 4.13e. which allows the use of an interior grease trap when an exterior grease trap is non-feasible. Ms. Martin changed the first sentence "... a mechanical type interior grease trap may be allowed..." to read "... a mechanical type interior grease trap *for a new facility* may be allowed...". The Board would still have to grant a variance when staff believes an exterior grease trap is feasible, but the owner requests to use an interior grease trap.

Motion by Dr. Miller, seconded by Ms. Martin to approve the amended Sewer Regulations to include a paragraph allowing the use of an interior grease trap with the insert of “for a new facility” added to the paragraph. Unanimous approval.

- **Amend Fee Schedule – Swimming Pool Fees** – Mr. Carbone explained to the Board that we normally charge this fee when a homeowner puts in a swimming pool. Since we only check to see if there is a septic system in the area, Mr. Carbone felt that this is in support of the Building Division; we do not inspect the pools or do any further evaluation. Mr. Carbone felt that the fee should be used only for commercial pools, which is what he understood the regulation was meant to enforce.

Motion by Ms. Martin, seconded by Dr. Miller to change the Permit Fee Schedule to charge the fee for Commercial Pools only. Unanimous approval.

- **Open Meeting Law Amendments** – Mr. Carbone informed the Board that there have been changes to the Open Meeting Law, effective July 1, 2010. Meetings must be posted 48 hours in advance and Saturday and Sunday will be excluded. At that time, an expected Agenda must also be posted. Mr. Carbone asked the Board to change the deadline for agenda items from the Wednesday before the meeting to the Monday before. In addition, the law requires that all documents referenced for decisions at the meeting be included with the minutes.
- **Ethics Reform Act** – Mr. Carbone included in the packets information on the Ethics Reform Act which requires all Staff and Board Members to take an on-line ethics test every other year. The completed Certificate has to be filed with the Town Clerk’s office.
- **Anti-Fraud Policy** – Mr. Carbone included in the packets information concerning the Anti-Fraud Policy, which gives a definition of Fraud as well as reporting guidelines.
- **Sign Home Health Care, Inc. Agreement** – The Board signed the yearly agreement and Mr. Carbone will mail the document immediately.

IV. Old Business

- **27 Kirkland Drive Update** - Mr. Carbone informed the Board that there has been no change in the condition of the property at 27 Kirkland Drive. Mr. Carbone is hoping to work with Town Counsel on this issue.

V. Definitive Subdivision Plans

- **Arbor Lane Subdivision** – See 7:15 p.m. appointment with Bill McLeod and Mark Johnson for the Board of Health decision.

VI. Plan Review

A. D.W.R.P. Variances/Local Upgrade Approvals (LUA) –

- **32 Mohawk Drive – Allow SAS to be 27' From Wetland where 50' is Required.** – Mr. Carbone informed the Board that on paper there seems to be enough space, but there is a drainage easement, trees and slope that hinders using that location. This location is the best and only place for the system to be located. Mr. Carbone recommended approval of the LUA.

Motion by Ms. Martin, seconded by Dr. Miller to approve the LUA to allow the SAS to be 27' from the wetland where 50' is required. Unanimous Approval.

- **250 Beacon Street - Allow SAS to be 10' From Foundation where 20' is Required.** - Mr. Carbone explained that there is a lot of beaver activity in this area which causes the nearby pond to flood out, so the homeowner wanted to move his septic system away from the beavers. Mr. Carbone recommended approval of the LUA.

Motion by Ms. Martin, seconded by Ms. Kellman to approve the LUA to allow the SAS to be 10' from the foundation where 20' is required. Unanimous approval.

VII.

Staff Reports

A. Director's Report:

- **MHOA Presidency** - Mr. Carbone informed the Board that he will be taking over as President of the MHOA after being Secretary for the past two years. Mr. Carbone stated that his work as Director of Public Health should not be affected and that, as President, he will have access to more people and programs which could benefit the Health Division.
- **Important Dates:**
 - December 18th 1:30 p.m. to 3:30 p.m. at the Senior Center – Seasonal Flu Clinic
 - December 18th 4:00 p.m. to 6:00 p.m. at the Senior Center –H1N1 Nasal Spray Clinic
 - January 11th at 6 p.m. – Board of Health Meeting
 - February 8th at 6 p.m. – Board of Health Meeting

B. Nurses' Report for October and November, 2009 –The Nurses' report was for informational purposes only.

C. Inspectors' Reports for October and November, 2009 – The Inspectors' Reports were for informational purposes only.

VIII. Board Member Reports

- **Salt Shed Meeting Update** – Mr. Carbone informed the Board that the Salt Shed Meeting was cancelled due to snow. However, Representative Barbara L'Italien, two Engineers from the Department of Transportation, and David Adleman did come. Mr. Carbone had the plans showing the proposed building in the Summer and the Winter. It was a different design and showed the Salt Shed near LaQuinta but with vegetation surrounding the building to help it blend in. There are still concerns from the businesses about having the Salt Shed in their area. Mr. Carbone will try again to have a larger meeting with all concerned parties in January, and will keep the Board posted.
- **H1N1 Update** – Mr. Carbone, along with Health Directors from surrounding communities, have been writing weekly articles for the Eagle Tribune. Last Friday, we had two different clinics; one for regular seasonal flu shots, and the other for H1N1 for Nasal Mist only. The nurses have been going out to the schools giving out the H1N1 vaccinations and will continue to do so.
- **Mr. Carbone's Talk with High School Students** - Mr. Carbone was invited back to the High School by Steve Sanborn to speak with the students. This time Mr. Carbone concentrated on Communicable Diseases, and spoke mostly about the Flu.

IX. Adjournment

Motion by Dr. Miller, seconded by Ms. Martin to adjourn at 8:56 p.m. Unanimous approval.